

Chapter VII

RELOCATION

General Requirements

HOME-assisted housing activities which involve displacement or relocation (temporary or permanent) of tenants, or the demolition or conversion of residential units occupied by low-income households, must adhere to the requirements of two Federal laws.

Uniform Relocation Assistance (URA) and Real Property Acquisition Policies Act of 1970

The federal URA and Real Property Acquisition Policies, as amended by the URA Amendments of 1987, contains requirements for carrying out real property acquisition or the displacement of a person, regardless of income status, for a project or program for which HUD financial assistance (including CDBG and HOME) is provided. Requirements governing real property acquisition are described in Chapter VIII. The implementing regulations, 49 CFR Part 24, require developers and owners to take certain steps in regard to tenants of housing to be acquired, rehabbed or demolished, including tenants who will not be relocated even temporarily.

Section 104(d) of the Housing and Community Development Act of 1974

Section 104 (d) requires each HOME contractor (CHDO or State Recipient), as a condition of receiving assistance under HOME, to certify that it is following a residential anti-displacement plan and relocation assistance plan. Section 104(d) also requires relocation benefits to be provided to low-income persons who are physically displaced or economically displaced as the result of a HOME-assisted project, and requires the replacement of low-income housing, which is demolished or converted. The implementing regulations for Section 104(d) can be found in 24 CFR Part 570(a).

HUD Handbook 1378

This handbook consolidates the basic statutory and regulatory requirements of the URA and Section 104(d) and related implementing regulations. It is a comprehensive and valuable reference for all contractors participating in the HOME program. The Department will provide a copy of Handbook 1378, upon request, to contractors. See the websites at the end of the chapter for suggested relocation file checklist and attachments.

Administrative Requirements

Each HOME contractor must adopt and make public its Residential Anti-Displacement and Relocation Assistance Plan, and must certify that it is following the Plan before HOME funds are provided.

URA Requirements

1. Minimize Displacement of Occupants

- a. When displacement is unavoidable, provide reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary and affordable replacement dwelling, and
- b. Ensure that sufficient funds are budgeted to comply with relocation regulations.

2. Timing for Relocation Assistance Eligibility

The “Initiation of Negotiations” establishes the date when tenants become eligible for relocation assistance.

- a. When a CHDO or State Recipient acquires a property, the delivery of the “initial written offer” by the CHDO or State Recipient to the owner to “purchase” the property is the “initiation of negotiations”.
- b. In a rehabilitation project, where the CHDO or State Recipient already owns the property, the “execution” of the Standard Agreement between the HOME contractor (CHDO or State Recipient) and the HOME Program is the “initiation of negotiations”. However, if the HOME contractor purchased the property with the “intent” to use HOME funds in the future for development or rehabilitation, relocation rules apply and will be retroactive back to the time of purchase.
- c. If the HOME contractor issues a notice or makes an offer (without a notice) of its “intent” to acquire the property and a tenant moves after that, but before the delivery of the “initial written offer”, the “initiation of negotiations” is the actual date that the tenant moved from the property.

3. What is Displacement?

- a. Prior to application for HOME funds, eligibility for relocation assistance is triggered by a tenant’s permanent move ONLY IF the HOME contractor or HUD determines that the tenant was displaced as a direct result of the property activity. For example, if an owner evicted tenants in order to propose a vacant building for HUD assistance, those tenants would be eligible for relocation assistance.
- b. After application for HOME funds, a person is displaced when:
 - A tenant moves permanently from the property because he/she is required to move permanently by the owner;

- The contractor or owner fails to provide the required notices (see Notices required in the next section) in a timely manner to the tenant;
 - The owner refuses to pay actual, reasonable expenses for a temporary move; or
 - The conditions of the temporary move are unreasonable.
- c. After the execution of the Standard Agreement with the HOME Program, a person is considered displaced if he or she moves permanently from the project and is not provided the opportunity to lease a suitable, affordable, comparable unit in the project.

4. **Required Notices**

- a. **General Information Notice:** Informs occupants of a possible project and of their rights under the URA. The notice stresses that the household should not move at this time and also provides information about assistance available if they are to be displaced. This notice must be given to occupants as soon as feasible to avoid having occupants moving prematurely and thereby possibly increasing relocations costs.
- b. **Notice of Eligibility:** Informs households to be displaced of their rights and levels of relocation assistance under URA. Households who move permanently from the real property after receiving the Notice of Eligibility, but do not wait for the 90-day or 30-day notice, may still be eligible for relocation assistance. This notice should contain a commitment for relocation assistance, including:
- Addresses of comparable replacement units.
 - A specified amount for a replacement housing payment and moving expense. (Note: Because comparable units set an upper limit for assistance, failure to provide information about available, comparable units may result in a requirement to pay excessive relocation costs).
 - Information regarding rental assistance for those tenants desiring to remain in the project, but who cannot afford the new rents.
- c. **Notice of Non-Displacement:** Informs households who will remain in the project after completion of their rights and the terms and conditions of their remaining at the property.
- d. **Temporary Relocation Notice:** Informs households who will be temporarily relocated of their relocation rights and the conditions of their temporary move. Those tenants who will be temporarily relocated must receive

“reasonable” advance written notice of the location, terms, and conditions of the temporary move and of their right to reimbursement of all reasonable out-of-pocket expenses.

- e. **Move-In Notice:** Informs households moving into potential projects after the application for HOME funds that they may be displaced and that they will not be entitled to assistance.
- f. **90 and 30 Day Notices:** Informs displaced households of the day by which they must vacate the property. Displaced households may be given at least 90 days to vacate their residence. No person may be required to vacate their dwelling or issued a 90-day Notice before the person has been given a written notice of an available, comparable replacement dwelling. If no date is specified in the 90-day notice, the tenants must be informed that they will receive at least 30 days advance written notice of the specific date.

NOTE: Failure to provide correct and timely notices can be a very expensive mistake. Notices may be issued by either the HOME contractor or the project owner. However, the HOME contractor is ultimately responsible and must assure that timely and correct notices are given. Notices may be personally served or sent by certified or registered first class mail with return receipt requested. Consistent with the goals and objectives of the HUD program, HOME contractors must ensure that they take all reasonable steps to minimize displacement as a result of a project.

Relocation Assistance Requirements

Who is Eligible for Assistance?

- Everyone who meets the URA definition of a “displaced person” is eligible to receive relocation assistance. There is no income limit for relocation assistance eligibility.
- Level and type of assistance is based upon several factors, including whether the person is a tenant, an owner, a business, his or her income and length of residency.

HOME Contractor Responsibilities

- Keep all residents informed of project activities and scheduling and ensure that all the previously mentioned Notices are provided in a timely manner.
- Provide information about federal, State, and local housing programs and how to apply for them.

- Provide referrals to other available assistance including human services, health services, public assistance, childcare, etc.
- Provide information about comparable housing opportunities and the household's relocation rights.

Eligible Relocation Expenses

Displaced households may choose to receive payment for moving and related expenses by either reimbursement of actual expenses or receipt of a fixed payment, based upon a schedule established by the Department of Transportation. Actual expenses are based upon the HOME contractor's determination that the expenses are reasonable and necessary. Such expenses include the following:

- Transportation of the displaced person and personal property at the current mileage rate for personal vehicles that need to be moved. Transportation costs for a distance beyond 50 miles is not eligible unless the HOME contractor determines that relocation beyond 50 miles is justified.
- Packing, crating, uncrating, and unpacking of personal property.
- Storage of the personal property for a period not to exceed 12 months, unless the contractor determines that a longer period is necessary.
- Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
- Insurance for the replacement value of the property in connection with the move and necessary storage.
- Replacement value of the property lost, stolen, or damaged in the process of moving where insurance covering such loss, theft, or damage is not reasonably available.
- Security deposits, credit checks and other reasonable expenses.

Ineligible Relocation Expenses

The following expenses are ineligible for reimbursement or payment to displaced households:

- Personal injury.
- Interest on a loan to cover moving expenses.
- Any legal fee or other costs for preparing a claim for relocation payment or for representing the claimant before the HOME contractor.

- The cost of moving any structure or other real property improvement in which the displaced person reserved ownership.
- Costs for storage of personal property on real property owned or leased by the displaced person “before” the initiation of negotiations.

Replacement Housing Payment

The assistance a displaced tenant receives varies depending upon whether the family was in occupancy more or less than 90 days prior to the date of execution of the HOME Program Standard Agreement.

The Replacement Housing Payment is intended to provide affordable housing for a 42-month period. Although the URA regulations mention a \$5,250 limitation on payments, it also requires that persons receive the calculated payment. Therefore, families are entitled to the full 42 months of assistance even though the total amount may exceed \$5,250.

Cash rental assistance must be provided in installments, unless the tenant wishes to purchase a home. If the displaced tenant wishes to purchase a home, the payment must be provided in a lump sum so that the funds can be used for a down payment, including incidental expenses. All of the payment must be used for the home purchase. Claim Form HUD-40058 (Appendix 14 of Handbook 1378) is used to compute the rental or down payment assistance.

Calculating the Replacement Housing Payment

If a tenant has occupied a displacement unit for **more than** 90 days, the replacement housing payment makes up the difference between the rent and estimated utility costs for the replacement dwelling or for a comparable unit, whichever is less, and the lesser of:

- 30% of the tenant's average monthly gross income, or
- The monthly rent and estimated average utility costs of the dwelling the tenant was displaced from.

EXAMPLE: URA REPLACEMENT HOUSING PAYMENT

\$ 600 Rent and utilities at actual replacement dwelling

\$ 500 Rent and utilities at comparable dwelling

Choose the lesser: \$500

\$ 400 Rent and utilities at the dwelling tenant was displaced from

\$ 300 30% of gross monthly income

Choose the lesser: \$300

REPLACEMENT HOUSING PAYMENT IS:

\$500 - \$300 = \$200 x 42 months = \$8,400

If a tenant has occupied a displacement unit for **less than** 90 days, the replacement housing payment makes up the difference between the rent and estimated utility costs for the replacement dwelling or for a comparable unit, whichever is less; and 30% of the tenant's average monthly gross income.

Optional Relocation Assistance

Contractors may use CDBG funds or HOME funds (in a HOME project only) to provide relocation assistance beyond what is required to persons covered by the regulations. If the additional assistance is not required by State or local law, the HOME contractor must adopt a written policy describing the optional relocation assistance and provide for equal relocation assistance within each class of displaced persons.

EXAMPLE: The contractor is not required to pay “temporary” relocation benefits to owners for owner-occupied rehabilitation projects. However, the HOME contractor can elect to pay temporary relocation benefits to these owners if it adopts a written optional relocation policy and provides the benefits equally to all owners in the program.

Rights of Residents Who Remain in the Project

Tenants who are intended to remain in the project must receive the offer of a "suitable" unit, which can be rented at an "affordable" price. If there is no increase in rent, the unit is considered affordable and the tenant is not considered “rent burdened,” even if the percentage of income that the family is paying is quite high.

If rents are increased after rehabilitation and rents are above the HUD Fair Market Rents, tenant-based assistance can be provided if the family’s income does not exceed Section 8 lower-income limits, and if the tenants qualify as “rent burdened.”

To determine whether a family is rent burdened, the HOME program uses a threshold of 30% of gross income for tenants whose incomes are above the Section 8 Lower-Income Limit, and uses a threshold of the Section 8 Total Tenant Payment (TTP) for tenants at or below the Section 8 lower-income limit.

TTP is the greater of:

- 30% of adjusted income, or
- 10% of gross monthly income, or
- Welfare rent (in as-paid states and communities only)

Economic Displacement

Tenants who move permanently after the execution of the HOME Standard Agreement because they did not receive an offer of a suitable unit at an affordable price are considered “economically displaced.”

Under URA, the HOME contractor may offer Section 8 or HOME tenant-based rental assistance to eligible lower-income tenants, if either is available, to prevent economic displacement. These rent burdened families who are offered tenant-based assistance before they move may use the assistance in the project or may move, without being considered displaced.

Tenants with incomes above the Section 8 lower-income limit may still be eligible under URA for assistance to prevent economic displacement.

Comparable Units Requirements

A comparable unit is one or more specific unit(s) offered by the owner to a displaced person in which the size, function, and location are as similar as possible to the unit the household is leaving. Comparable units should be:

1. **Similar in size:** Generally, comparable units will have the same amount of space as the original unit and should be typical in size for the residential development. If the original unit was dilapidated, a smaller, decent, safe and sanitary unit that can accommodate the household may be considered.
2. **Similar in function:** To be considered similar in function, the comparable unit should provide the same function, service, or purpose as the displaced unit. For example: If the original unit had a separate dining room and living room, but the replacement unit has a combined living and dining area to accommodate the same activities, the replacement unit is “functionally equivalent”.
3. **Reasonably accessible** to the person’s employment.
4. **Located in an equal to or better area** as the displacement unit in terms of public services and commercial and public facilities. For example: a displaced family has two school age children. If they want to keep their children in the same school, the comparable unit should be within the same school district.
5. **Decent, safe and sanitary** (must meet Section 8 Housing Quality Standards).
6. **Within the financial means of the displaced person.** Because URA requires that financial assistance be provided to assist the household to afford the replacement unit, the unit selected as comparable is not required to be affordable without assistance.

7. In an area **free from unreasonable adverse environmental conditions**.
8. **Available to the displaced person:** Units are "available" if the person has been informed of the location(s); if the person has sufficient time to negotiate a rental or lease agreement or a purchase agreement; and if the person receives relocation payments (as necessary) in sufficient time to complete the move or purchase.

How Long Must Units Remain Affordable?

HUD expects HOME contractors to follow the “intent” of the URA and HOME requirements. In general, HUD expects the following:

1. In-place tenants should be offered a new lease, presumably for one year, when the rehabilitation is completed. Any increase in rent caused by the rehabilitation would be reflected at that time.
2. An owner and tenant could agree to continue an existing lease, but the HOME contractor would have to determine on an individual basis whether the terms of this lease meet the test of avoiding rent increases to the family as a result of the rehabilitation.
3. Any rent increases that occur subsequent to the initial rent increase are presumably based upon market conditions and not based upon rehabilitation costs. An owner may not keep rents artificially low at the time of rehabilitation completion and then subsequently raise rents dramatically. This would provide a tenant who moved out due to the increased rent with a basis for a claim that he/she was a “displaced person”.

Section 104(d) Requirements

Demolition or the conversion of units triggers Section 104 (d) requirements when HOME funds are used for a project. However, acquisition-only activities do not trigger Section 104 (d).

How Does 104(d) Differ from URA Requirements?

- Section 104(d) only provides for replacement housing payments for lower-income tenants. Tenants who are not lower-income are covered under URA.
- Section 104(d) requires replacement housing payments to be made for a 60 month period, rather than the 42 months under URA.
- There is NO cap on the 104(d) replacement housing payment.

- A displaced person may wish to receive his or her replacement housing payment in a lump sum to purchase a home. A single-family residence, a cooperative or mutual housing are the only permitted forms of homeownership under 104(d). If a displaced tenant wishes to purchase something other than a single family residence, cooperative unit or a mutual housing unit, his or her replacement housing benefits can be calculated using the URA formula (42 months, rather than 60).
- The HOME contractor, not the tenant, decides whether tenant-based assistance or a replacement housing payment will be made. However, if the 104(d) family wants a cash payment and therefore rejects an offer of tenant-based assistance, the family retains its right to a cash payment (42 months) under URA.
- The major difference between URA and Section 104(d) is the focus in 104(d) on the “loss” of low-income housing through demolition or conversion.

One-for-One Replacement Requirements

Section 104(d) requires a one-for-one replacement of low- and moderate-income dwelling units that are demolished or converted to other use. Low- and moderate- income dwelling units are those with a market rent that is no higher than the Section 8 Fair Market Rent.

Contractors **MUST** replace a unit if:

- a. It is occupied or is a vacant occupiable dwelling unit, in standard or substandard condition (regardless of how long it has been vacant),
or
- b. It is to be demolished or converted to a unit with market rents above the FMR or to a use that is no longer for permanent housing.

A unit **DOES NOT** need to be replaced if the unit is a dilapidated, substandard unit that is not suitable for rehabilitation **and** has been vacant for over a year.

Units Meeting One-for-One Replacement Requirements

Replacement units must be within the Contractor's jurisdiction and, if possible and consistent with other statutory priorities, in the same neighborhood. Replacement units must also comply with the following:

- a. Be in standard condition;
- b. Be designed to remain affordable to low-income families for at least 10 years;

- c. The number of bedrooms replaced must equal the number of bedrooms removed (but not necessarily in the same unit configurations);
- d. Replacement units must be provided within four years;
 - Units made available up to one year before the submission of the contractor's Anti-Displacement Plan may be counted as replacement units.
 - Units made available within three years of the beginning of the demolition or rehabilitation can be counted as replacement units.
- e. Substandard units that are rehabilitated can count toward the replacement units if:
 - No person was displaced by the assisted activity;
 - The unit was vacant for at least three months before the agreement authorizing the rehabilitation was executed; and
 - The unit is in standard condition following rehabilitation.

Exceptions to One-For-One Replacement Requirements

- a. HOME contractors may request an exception to the one-for-one replacement requirements if adequate, vacant, affordable housing is available.
- b. Contractors must make the submission public and give interested persons 30 days from the date of submission to provide the HOME Program with information supporting or opposing the request. If HOME supports the request, then the HOME Program must provide its recommendation to HUD.
- c. Exceptions to the one-for-one replacement requirements must be sought **BEFORE** executing a contract for beginning demolition or conversion of low/moderate income dwelling units.

The HUD Field Office will make this determination based on the following:

- 1. The jurisdiction's vacancy rate and number of vacancies;
- 2. The length of waiting lists for assisted housing in the jurisdiction;
- 3. The needs analysis contained in the Consolidated Plan; and
- 4. Housing that may be available nearby, but outside, the jurisdiction.

Disclosure and Reporting Requirements

Before a HOME contractor executes a contract for any activity that would create the need for one-for-one replacement, the contractor must:

- a. Make the plan public, by publication in a newspaper of general circulation, and
- b. Submit to HCD the following information:
 - Description of the proposed activity;
 - Location and number of units to be removed;
 - Schedule for the beginning and completion of the demolition or conversion;
 - Location and number of replacement units;
 - Source of funding and timing for providing the replacement units;
- c. The Contractor's basis for determining that the replacement units will remain affordable for at least 10 years from the initial date of occupancy; and
- d. The Contractor's justification (if applicable) for replacing larger units with smaller units.

Relocation of Businesses, Non-Profits and Farms

- a. Payment for Actual Reasonable Moving and Related Expenses
 - Eligible costs include all the relocation expenses listed for relocated households, plus additional costs such as providing replacement stationary, new licenses or permits, moving and re-assembling/installing equipment.
 - Up to \$10,000 towards re-establishing the business, non-profit, or farm, or for repairs, modifications, or improvements to the replacement property, or for advertising the new location, marketing studies, and other reasonable costs.
- b. Expenses Not Covered
 - Loss of goodwill, profit, or trained employees.
 - Legal fees other than the cost of preparing a claim for relocation payment or representing the claimant before the HOME contractor.

- Interest on a loan to cover moving or re-establishment expenses.
- The purchase of new capital or office equipment, etc.

c. Fixed Payment Alternative

A displaced business, non-profit organization or a farm may choose to receive a fixed payment for relocation expenses, rather than actual expenses. The amount of the fixed payment may not exceed \$20,000 nor be less than \$1,000.

The amount of the fixed payment is determined by income:

- Business and farm income is determined by average annual net earnings for two years prior to displacement.
- Non-profit income is determined by subtracting average annual administrative expenses from average annual gross revenue.

Economic Displacement Under 104(d)-Handbook 1378, Paragraph 7-7b(3)

1. Lower Income Tenants

- Lower income tenants who are intended to remain in the project must receive the offer of a “suitable” unit which can be rented at an “affordable” price [7-7b(3)(a)].
- Tenants who move permanently after execution of the agreement because they did not receive such an offer are “economically displaced”.
- If there is no increase in rent, the unit is considered affordable and the tenant is not considered rent burdened, even if the percentage of income that the tenant is paying quite high price [7-7b (3) (a) (ii)].
- If the rent is increased, it may not exceed the tenant’s Total Tenant Payment as calculated for the Section 8 program. [7-7b(3)(a)(ii)].
 - As under the URA, the Contractor may offer Section 8 or HOME tenant-based assistance, if either is available, to prevent economic displacement.

2. Tenants With Incomes Above the Lower Income Limit

A family whose income is above the Section 8 Income Limit is not covered by 104(d). However, such a family who is economically displaced is covered by the URA.

Waivers, Time Extensions, and Appeals

1. Waiver by Displaced Person

- a. A displaced person may waive his or her right to a relocation payment by refusing to file a claim for the payment. This can be a short letter from the displaced person with signatures or they may sign a written waiver in a format acceptable to HUD.
- b. The written waiver must describe the specific assistance to be waived, cite pertinent law and regulations under which it is available, and indicate that the person understands that, absent the waiver, he/she cannot be displaced unless provided the prescribed assistance.

2. Waiver by HUD

- a. HUD headquarters may waive any requirement of the 1378 Handbook not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person.
- b. Requests for waivers are justified on a case-by-case basis. Requests are submitted to the HUD Field Office for consideration.

3. Time Extensions by HOME Contractor

- a. On a case-by-case basis, for just cause, the contractor shall extend any time limit specified for the filing of a claim or appeal.
- b. On a case-by-case basis, the contractor shall extend the time for purchasing, renting or occupying a replacement dwelling (in order to qualify for a housing payment).
- c. The contractor shall document any basis for denying a person's request for an extension of such time limits.

4. Appeals

- a. The contractor shall promptly review all written appeals in accordance with applicable law, regulations, and policies. A contractor shall consider a written appeal regardless of form.

- b. A person may file an appeal with the contractor in any case in which the person believes that the contractor has failed to: (1) properly determine that a person will qualify for relocation assistance; (2) properly determined the amount of the relocation payment required (a person's acceptance of a payment that is less than the full amount claimed does not limit the person's right to appeal; (3) provide appropriate referrals to comparable replacement dwellings; or inspect the dwelling in a timely manner; (4) waive the time limit for the filing of a claim or appeal for the purchasing, renting, or occupying a replacement dwelling.
- c. Time limit for initiating appeal: The agency may set a reasonable time limit for appeals. It shall not be less than 60 days after the person receives a written notification of the contractor's determination on the person's claim.
- d. Right to Representation: A person has the right to be represented by legal counsel with his or her appeal, but solely at the person's own expense. If a lower-income person is unable to prepare a written appeal or requires assistance, the contractor shall provide such assistance by referring the person to appropriate legal services at NO cost to the person.
- e. The contractor shall make all pertinent materials available for inspection by the person or their legal representative.
- f. The contractor reviewing the appeal shall not have been directly involved in the action appealed.
- g. The contractor shall promptly make a written determination after receiving all information, including an explanation of the basis on which the decision was made.
- h. A person who is dissatisfied with the determination may submit a written request for a review of that decision to the HUD Field Office, which will review the case and promptly make a written determination with explanation of the basis with which the decision was made.

Additional Resources

Federal Uniform Relocation Assistance and Real Property Acquisition Regulations for Federally-assisted Programs: See Final Rule and Notice (URA), 49 CFR Part 24, Dated March 2, 1989 (URA).

New changes in the residential moving expense and dislocation allowance schedule can be accessed by calling the U. S. Department of Transportation Federal Highway Administration's Office of Real Estate Services at (202) 366-0142.

Web Sites:

Relocation and Real Property Acquisition information can be accessed at <http://www.fhwa.dot.gov/realestate/relrght.htm>.

Information on Tenant Assistance, Relocation and Real Property Acquisition from the HUD 1378 Handbook can be accessed under "Handbooks and Notices" of Community Planning and Development at http://www.hudclips.org/sub_nonhud/cgi/hudclips.cgi?hudclips.